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HEARINGS

BEFORE THE

Subcommittee of the

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

Washington, D. C.

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ANTI-LYNCHING

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Friday, January 20, 1950

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ANTI-LYNCHING

FRIDAY, JANUARY 20, 1950

United States Senate,

Subcommittee of the Committee
on the Judiciary,

Washington, D.C.

The subcommittee met, pursuant to call, in Room 429,
Senate Office Building, Senator Harley M. Kilgore (chairman
of the subcommittee), presiding.

Present: Senator Kilgore.

Also present: Robert Young, Professional Staff Member.

Senator Kilgore. The meeting will be in order.

You may proceed, Senator Humphrey.

STATEMENT OF HON. HUBERT H. HUMPHREY,
A UNITED STATES SENATOR FROM THE
STATE OF MINNESOTA

Senator Humphrey. Mr. Chairman, I wish to express my
appreciation to the committee for giving me the opportunity to
testify on behalf of S. 1404, a bill introduced by the senior
Senator from Oregon, Mr. Morse, the former Senator from New
York, Mr. Wagner, and myself, this bill being introduced last
year. I know that Senator Morse would have been eager to
testify in person in behalf of this legislation but he is

unfortunately away on official business. You know that we did not receive notice of this subcommittee hearing until just a few days ago and therefore he was not available for testimony?

Senator Kilgore. May I interrupt at this point to state that we have had a number of requests to keep the hearings open for testimony on both sides, so we will probably finish up the hearings and Senator Morse will have an opportunity to testify and anybody else who wants to testify on either side.

Senator Humphrey. I am sure he will appreciate that and will be happy to testify.

I will, however, ask your permission to place in the record of the hearings the statement by Senator Morse two years ago when a bill similar to the one we are now discussing was under consideration. I have that statement with me, Mr. Chairman, and I will present it to you for the purpose of inclusion in the record.

(The statement referred to is as follows:)

Senator Humphrey. There can be very little debate, Mr. Chairman, about the advisability of safeguarding Americans against the fear of lynchings. Legislation to solve this problem has been introduced in every Congress since the 60th Congress. Several anti-lynching bills passed the House of Representatives; the Senate, however, has never passed a bill on this subject.

Mr. Chairman, I can think of no measure which will do more to raise the moral stature of Americans in the eyes of the world than the passage of the bill which we have introduced. Mr. Chairman, I can think of no measure which will do more to guarantee freedom of the individual from the threat of illegal bodily injury and death, freedom from violence and irresponsible mob action, than the bill which we have introduced and which we ask you to support. Freedom is the most basic of human rights. Without it, all other civil rights become academic.

I do not believe that it is relevant for us to analyze this bill statistically. Full hearings were held on this legislation during the 80th Congress. Adequate testimony was presented statistically demonstrating either that more than 5,000 persons were lynched during the past fifty years, which would be an argument for the legislation, or that lynchings are decidedly on the decline since there have been only two or three annually in the most recent period, which would be an

argument that the legislation is unnecessary. In the testimony of Mr. Morse, which I am submitting again for the record, you will find statistical tables of lynchings which have taken place in the United States between 1882 and 1946.

Mr. Chairman, one lynching is one lynching too many. Mob violence has no place in America. Lynching has no place in a society based on the eternal religious and democratic principles of human dignity. Anti-lynching legislation represents the heart and core of a civil rights program in America.

I just want to digress for a moment, Mr. Chairman, and go back to what I have stated in the words just before this last paragraph. I realize that there are a number of people who feel that since the number of lynchings is on the decline, that the necessity for any federal legislation in this field has been set aside. I can not concur with that point of view since it is rather difficult to be able to prophesy what may happen tomorrow on the basis of what happened yesterday. More than that, this legislation, whether it is operative or whether it is applied, is still meaningful and needed by the very fact that it fills in a gap in the public law of this country which gap needs to be filled in if we are to underwrite the privileges and immunities which are guaranteed under the Fourteenth Amendment of the Constitution.

Just as important, however, Mr. Chairman, is the fact

that the nature, character and techniques of lynchings have changed in recent years. Today public lynchings by large crowds with great publicity is the exception rather than the rule. Today terrorists frequently operate in small bands secretly. I am informed that every year many Negroes in the South simply disappear. More important, statistics as regards lynchings are inconclusive in that Negroes, knowing that they are without federal protection, refrain from exercising basic civil rights which would incur the anger of anti-Negro forces.

It ought to be crystal clear in this testimony that S. 1403 being proposed by Senator Morse, former Senator Wagner and myself, does not apply to any one section of this country. I make an appeal to this subcommittee to give consideration to this legislation as a universal law applicable to all people, to all areas and to all sections of the United States.

At times I feel that the cause of civil rights legislation has been damaged and injured by the fact that far too much emphasis has been placed upon particular areas of the country. Mob violence in New York is just as bad as mob violence, if you please, in some small community in Georgia or South Carolina. Mob violence in Minneapolis, Minnesota and San Francisco, California, is not a bit different than it would be in some community in Mississippi or in Alabama.

I emphasize that because in my testimony I want the remarks of my testimony to fall equally upon all areas of the United States whereabout this crime of lynching may appear and the bill S. 1404 is one which applies to every citizen of the United States and it is a bill that covers all people regardless of race, color, creed, ancestry or national origin. I hope that will be emphasized.

Senator Kilgore. At this point, Senator Humphrey, the need for this legislation apparently arises from inability to successfully convict the perpetrators of bill violence in the areas in which the mob violence occurs.

Senator Humphrey. That is correct.

Senator Kilgore. Therefore the Federal Government, it is your contention, should guarantee protection by granting it the right to prosecute and try in federal courts perpetrators of mob violence wherever it occurs.

Senator Humphrey. That is my position, Mr. Chairman, and that position is based upon the acknowledged fact that a citizen of the United States has a dual citizenship. He has a citizenship of his own commonwealth, of his own state; likewise he is a citizen of the United States, and the Thirteenth, Fourteenth, Fifteenth amendments have made it quite clear as to the obligations and responsibilities of the Federal Government in protecting American citizenship and in guaranteeing certain basic rights.

In fact, the whole spirit of the Constitution and the spirit of the law of this land is one of the guarantee of basic human rights and, as I have said, the basic right of human freedom, the right to live and the right to live under the protection of the law is the most basic and fundamental right of the American system of law or of social organization.

I refer again to the fact that Thomas Jefferson in the Declaration of Independence describes certain inalienable rights of life, liberty and the pursuit of happiness. A man can not have life, liberty or pursuit of happiness if he lives under the threat of, under the fear of, or constant challenge of mob action without due protection of the law.

In 1946, the President of the United States issued Executive Order 9808, establishing the President's Committee on Civil Rights. It is significant that this executive order came about as a direct result of a series of lynchings which took place that very year, - the murder of two men and their wives in Monroe, Georgia. The President, issuing the order, declared:

"...the preservation of civil rights guaranteed by the Constitution is essential to domestic tranquility, national security, the general welfare, and the continued existence of our free institutions".

He further stated:

"... the action of individuals who take law into their own hands and inflict summary punishment

and wreak personal vengeance is subversive of our democratic system of law enforcement and public criminal justice, and gravely threatens our form of government ..."

Fifteen distinguished citizens representing the religious, labor, business and national racial minority groups coming from every geographical section of the United States, were commissioned with the responsibility of determining how the federal, state and local governments could better safeguard civil rights and to recommend to the President necessary legislation toward this end.

After nearly a year of painstaking study of all questions relating to the violation of civil rights, the committee unanimously recommended -- and I underscore this -- as one of the measures to make secure the rights of Americans, enactment by Congress of an anti-lynching act. The committee was also careful to point out what such a law "must contain" to be "effective".

It is in considering the specific recommendations of the committee as to the content of anti-lynching legislation that our opposition to S.91, the Ferguson anti-lynching bill which has already been reported out by your committee, can best be understood.

Let us look specifically at Section 4 of the Humphrey-Morse bill. Our bill defines a lynch mob as "any

assemblage of two or more persons, which shall, without authority of law, (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national, racial ancestry, language or religion." The same applies where the participants in the lynching desire to take the law into their own hands and punish the victim. This definition would clearly exclude all the usual cases of murder.

S. 91, however, does not effectively punish those who engage in lynching. It punishes members of a lynch mob only when a conspiracy can be proved between the members of the lynch mob and any state or federal officer with the responsibility to protect public safety. The necessity to prove "conspiracy" is the Achilles heel of the Ferguson bill. It is the great weakness of the legislation which makes it unacceptable to all who are truly concerned with civil rights, and all who are genuinely interested in solving this vital national problem.

Senator Kilgore. At that point I want to raise this question: In the Ferguson bill, which is merely a draft of a bill battled out here in the committee on questions of constitutionality and other things, it seemed to be the consensus of opinion of at least the majority of the committee that that was one of the ways that the Federal Government

could, without constitutional amendment, get jurisdiction to try a citizen of a state.

Senator Humphrey. Mr. Chairman, the testimony that I presented on the part of Senator Morse goes into the constitutionality of S. 1404. Senator Morse, as I understand, is prepared to offer additional testimony in reference to the constitutionality. I am also going to make reference later on in my prepared statement as to why I consider Senator Morse a most capable authority in this field, having been a dean of a law school and an acknowledged student of the law.

It is my opinion that under the constitutional provisions of the Fourteenth Amendment, which all too often have not been fully applied, that there is plenty of constitutional base for S. 1404 and we are more than happy to supplement this prepared statement in reference to the broad outlines of the bill by additional legal backgrounds of constitutional law, citations and background which I shall submit.

Senator Kilgore. I would personally appreciate it if you would submit it.

Senator Humphrey. We will see that is done. I have some such statement today but it is not prepared in complete form such as I would like to have it.

This approach to the problem of lynching may have served some purpose ten or more years ago when almost all lynchings that took place involved the open participation of local police officers, county sheriff or constable. In

the past ten years, however, in the majority of lynchings evidence of active open participation by police officers has been difficult to obtain. Even if the state police machinery is negligent, the open active participants usually do not include the police officers. The most recent lynchings which have taken place would under the terms of the Ferguson bill not be violations of the anti-lynching law and would not be subject to federal jurisdiction.

The President's Committee on Civil Rights, in delineating what an "effective" anti-lynching law "must contain" to be "effective", said:

"First, it should define lynching broadly", the committee declared. Section 4 of the Humphrey-Morse bill contains a broad definition of lynching.

"Second, the federal offense ought to cover participation of public officers in a lynching, or failure by them to protect a person accused of a crime against mob violence. The failure or refusal of public officers to make proper efforts to arrest members of lynch mobs and to bring them to justice should also be specified as an offense." Sections 5 and 6 of our bill so provide.

The committee continued: "Action by private persons taking the law into their own hands to mete out summary punishment and private vengeance upon an

accused person; action by either public officers or private persons meting out summary punishment and private vengeance upon a person because of his race, color, creed or religion - these twoo must be made crimes."

Section 5 of our bill makes it a felony for any person: whether a public officer or not to commit violents under these conditions and Section 6 punishes State officers who neglect or wilfully refuse to prevent a lynching or apprehend members of a lynch mob.

"Third, the statute should authorize immediate federal investigation in lynching cases to discover whether a federal offense has been committed."

Section 7 of the bill directs the Attorney General of the United States to make such an investigation.

"Fourth, adequate and flexible penalties ranging up to \$10,000 and twenty year prison term shold be provided."

Section 5 of our bill provides that any person found guilty of the participation in a lynching shall be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding twenty years or both.

In its report to the President, the Committee on Civil Rights stated:

"The devastating consequences of lynchings

go far beyond what is shown by counting the victims. When a person is lynched and the lynchers go unpunished, thousands wonder where the evil will appear again and what mischance may produce another victim. And every time lynchers go unpunished, Negroes have learned to expect other forms of violence at the hands of private citizens or public officials. In describing the thwarted efforts of the Department of Justice to identify those responsible for one lynching, J. Edgar Hoover stated to the committee: 'The arrogance of most of the white population of that country was unbelievable, and the fear of the Negroes was almost unbelievable.'

"The almost complete immunity from punishment enjoyed by lynchers is merely a striking form of the broad and general immunity from punishment enjoyed by whites in many communities for less extreme offenses against Negroes. Moreover, lynching is the ultimate threat by which his inferior status is driven home to the Negro. As a terrorist device, it reinforces all the other disabilities placed upon him. The threat of lynching always hangs over the head of the southern Negro; the knowledge that a misinterpreted word or action can lead to his death is a dreadful burden."

Now, Mr. Chairman, I would say that Mr. Hoover has circumscribed his remarks by a particular area of the country. I insist that this threat of lynching is just as much a threat to a man's sense of security, to his knowledge of freedom and to his recognition as a full fledged American citizen in any section of the country as it happens to be in any particular section. As I said earlier in my remarks, if this happens in Michigan, and we have had some examples of race riots in Chicago and Michigan and other areas of the country, it is just as serious there as it is if it happens in Atlanta, Birmingham, Mobile or any other place.

I assume, Mr. Chairman, that since the committee did report out an anti-lynching bill, it is unnecessary for us to make further argument as to the necessity for federal intervention with regard to this basic policy question. By that I mean I am sure the committee realizes that some form of federal intervention is necessary. Now the question is: How much? What should be its scope? What should be its application? What should be its application?

The basic question our opponents tell us is a constitutional one, first, as to whether a county can be held civilly liable as our bill would provide; secondly, whether we can make lynching that much of a federal crime that we can hold citizens who participate in the lynching criminally responsible in the federal courts. I am not a lawyer,

Mr. Chairman, but I have had an opportunity to read the scholarly testimony of the Senator from Oregon on this subject two years ago which I have had included in the record. He said:

"It is my firm conviction that my proposed legislation is entirely constitutional in every respect. I believe that every provision in the bill is fully authorized by the due-process and equal-protection clauses of the fourteenth amendment. I believe that every provision of my bill is independently authorized and supported by the privileges and immunities clauses of the fourteenth amendment. However, since the United States has recently entered into treaty obligations with other nations" --

and a treaty is part of the law of the land and obviously must be constitutional if it is entered into --

"which require us as a nation to protect the lives and property of all persons within our jurisdiction against any infringement based on race, color, creed, or national origin, I also desire that Congress explicitly recognize that this bill is in fulfillment of those treaty undertakings."

The treaty referred to is nothing further than the Charter of the United Nations and obviously this treaty imposes upon the people of the United States and the government

of those people the fulfillment by law of the protective provisions.

Senator Kilgore. With the advice and consent of the Senate.

Senator Humphrey. With the advice and consent of the Senate, which has already been given. The Senate of the United States has already said by its passage of the United Nations Charter that we as a nation are required to protect the lives and property of all persons within our jurisdiction against any infringement based on race, color, creed, or national origin. That is the basic charter of civil rights and I state in reference to all civil rights measures, Mr. Chairman, that since the Senate of the United States knowingly and with full and complete knowledge of the wording and articles of the Charter of the United Nations, has adopted such provision into the law of the land, which this treaty is, that the Senate of the United States has already by its own vote dispelled the constitutional argument as to what the Government of the United States can do in reference to civil rights legislation.

We have taken a commitment upon ourselves by the signing of a treaty with an overwhelming vote of the United States Senate that this is constitutional, that it is legal, and that it is a part of the legal framework of American law.

Now the next step within this whole program of fulfilling our commitments is the passage of specific public law pertaining to certain violations of civil liberties so that we can fulfill our treaty obligations.

I might go further, Mr. Chairman and say that the statement on human rights by the Commission on Human Rights that has drawn up this strong and powerful statement which will be presented to our government is a further example of the desire of the American people and of the Government of the United States to fulfill the commitments that we have made under the Charter of the United Nations.

I know that one could digress for a very long time on this and I can not resist the temptation. Every time that we get into our cold war argument, this constant conflict between the democracies on the one hand and the Iron Curtain countries, the satellites and the Soviet Union on the other, our most blistering argument to the Soviet Union is their denial of human rights, their slave camps, their processes of extermination or liquidation, their use of the power of the state, if you please, to take away basic liberties from the citizens of the satellite countries or the citizens of the Soviet Union itself. Here we are laying ourselves wide open, and there is no better example of it that any time any one of the Soviet Union representatives wants to attack the United States here or abroad, what is their attack?

Their attack is that we as a nation, as a people, have made broad pronouncement and pious statements about human rights and equal rights and civil liberties and civil rights, and yet we have a number of violations which we do little or nothing about to correct.

Now I know, of course, that these exponents of Communism exaggerate but I also know that they have found some basis of fact and they have made an exaggeration upon the basis of facts that we ourselves have been unwilling to do anything about.

Wherever I have been and whenever I have had a chance to make such a statement as I am making today, Mr. Chairman, I point out that I think the major weakness in America's foreign policy is our failure at home to adequately protect the civil rights and the civil liberties of the American people.

I should like to emphasize again that the majority of the population of this world is colored and I should like to tell my friends who are also eager to defend Formosa that if they spent a little of their enthusiasm trying to defend the principle of human equality, they would not be having as much trouble in Asia as they are having today and we would not be having as much trouble with reference to such nations as China and Asiatic Formosa.

Some of the greatest leaders in the world, Nehru of

India and others, have pointed out that the weakness in our moral armorplate in our dealings with the Asiatic world has been our failure to fulfill our obligations and responsibilities in reference to the rights and privileges of people regardless of race, color or creed.

The time has arrived, Mr. Chairman, where this is not just an academic issue, where there is no longer something which pertains to one section of the country versus another in the United States. This is no longer a party matter. I think that it is about time that we recognize we are not going to be able to have a foreign policy based upon dollars that is going to be successful alone. We are not going to have a foreign policy based upon national defense successful by it alone; we have to include in that foreign policy what we included in the Charter of the United Nations, the respect for human rights, not only respect for them but implementing that respect by basic law of the land.

Why we dillyed dallied around this long about a proposition that is as meaningful as an anti-lynching bill or any other civil rights bill is more than I can understand. To those who say we have only a few lynchings, I say, "O.K., pass the bill. Nobody will be hurt too much if we pass the bill." To those who say we have many lynchings, "Obviously such legislation is needed." We have ourselves wrapped up in some form of emotionalism or sectionalism in this country

where we are not looking at this legislation on its merits.

Senator Kilgore. Do you not think that has been a mistaken approach on the question of anti-lynching, to look at it purely as a sectional problem and also to look at it as merely the taking of a human life? There are a lot of other things that are just as bad.

You probably remember the Night Riders in Kentucky not so very long ago who burned the homes and barns and things of farmers who refused to conform to their ideas?

I remember during the Volstead days when in certain sections of Virginia, Tennessee, West Virginia and Kentucky a law-abiding citizen who happened to testify against a lawless moonshiner would probably have his barn and haystacks burned and his cattle killed, but the State authorities in a lot of those succeeded in wiping that out; but the fear not only of lynching but of violence and of danger to one's family is really the worst part of it and that can extend all over the country. It can get into industrial-labor welfare, in fact, and can be injected in there. Do you not think that is so?

Senator Humphrey. There is no doubt about it at all and we have had years of experience with such violence in industrial and labor management relations.

Senator Kilgore. That is one point in the bill that worries me. I think the question of the protection of the

rights of a human being might probably be best served by looking to the punishment of the violators rather than to the question of damages against a state or a subdivision thereof.

Senator Humphrey. I would say to the chairman of the committee that those are obviously debatable points that reasonable men can work out. I think that obviously the apprehending of those criminally responsible is the first responsibility. I might also say that where you have the situation where a breadwinner of a family, let us say, even though the amount of bread may not be too much, has had his life taken away and the family lives in fear, that there is some responsibility upon the organized community, the county, the locality, municipality or state or political subdivision, to provide for those who have been so injured and so damaged.

I want to concur in the sentiments and the expression of the Chairman of the subcommittee again about the universality of the application of this kind of law and not sectionalism. I want to get this argument of anti-lynching out of the area of sectional consideration.

Senator Kilgore. In other words, it is not just a question alone of oppression of minority groups by reason of race, color, religion and so forth; it may be oppression of an individual or group because they failed to conform to the thinking of people of their own group.

Senator Humphrey. It often happens that way, indeed it has. We have had many examples of that in the political history of the United States.

Some time, Mr. Chairman, somewhere in the government of the United States, forcibly it must be said and clearly it must be stated that the foreign policy of the country requires for our national defense 32 cents out of every budget dollar and for our foreign aid this new budget of 1950, 11 cents out of every budget dollar. That is a total of 43 cents or 43 per cent of the American budget involved directly in our foreign policy and our national security. Apparently the Congress of the United States is a whole lot more willing to vote tremendous sums of money, billions and billions of dollars of money, in an effort to buy peace but they are unwilling, Mr. Chairman, to even vote a basic law which will do possibly more in the psychological realm -- and a good deal of this cold war is a psychological proposition -- they are unwilling to vote one piece of legislation that will strengthen our hand in dealings with people all over the world.

There is not a member of the United Nations delegation from the United States, nor is there a single competent reporter of the great radio news services of the world who will not tell honestly that the major weakness in American foreign policy today is our failure to meet the responsibilities

of civil rights legislation and the protection of civil liberties and civil rights of some of the minority groups of the United States. I heard that tremendous program over CBS here, I think on New Year's Day, Ed Murrow being the moderator and chairman of the program, with all his correspondents called in from all over the world. I think there were 13 of them, and without exception every one of them said that the major weakness in American foreign policy today in the areas of the world where there are tremendous minority groups, as we call them, where the colored people of the world live, is the fact that the United States of America was on the spot because of its failure to fulfill the constitutional obligations of our own Constitution to adequately protect the basic civil rights of the American people.

Senator Kilgore. As an actual fact, though, Senator Humphrey, is that not being used for propaganda purposes by our enemies?

Senator Humphrey. Exactly.

Senator Kilgore. In fact, if we have even one incident a year, it is blown up to a very exaggerated size abroad and does have a terrific propaganda effect.

Senator Humphrey. Indeed it is and it is exaggerated. I want my statement to say that. Any American and every intelligent citizen knows that the Communists or Fascists

will use the big lie as often as they possibly can to get people to believe it. But when the lie is substantiated by a modicum of fact, then it is easier to believe.

I want to make this final statement in reference to the foreign aspect. India and Southeast Asia are the crux possibly today of whether or not we are going to have a free world. This is the focal point. This is the one place where we have not stopped the tide of Communism. What is the major issue in every newspaper in India? What is the major issue in every newspaper in Burma? What is the major issue in every newspaper in Indonesia? The charges which are made about the failure of the American people and the American government to guarantee basic civil liberties. That is, whether we like it or whether we do not, the fact is that they are using it on us. We can talk about freedom and liberty until kingdom come. The fact is that the propagandists who use that are using those things to damage us. We as Caucasians, let us say, have been under the spotlight for years in the colored areas of the world. We have exploited them. The history of the white man as an exploiter, as an imperialist, is one that is recorded in bloody pages of history. We have to come cleaner than we used to come.

That is one of my reasons for my appeal here.

I am going to conclude my statement because I have another committee meeting to which I have to go. I just

want to say in reference to my colleague and my friend, the Senator from Oregon, that I hold him in the highest regard as an authority. As I mentioned, he is a former dean of a law school and one of the outstanding legal scholars in America and is, in my opinion, competent authority for the proposition that the legislation which he and I introduced is constitutional. I have already placed Mr. Morse's testimony in the record for your examination. I am sure he is going to testify on his own.

America has given the world economic and political leadership, but she can not and will not supply true moral leadership until every person, regardless of his race or color, may exercise every right as a citizen and be safe against the lynch mob.

That is the sum and substance of the prepared testimony that I have, Mr. Chairman. I know that you are going to have many other witnesses. I am prepared to come back at any other time if there is interrogation or cross-examination on that which I have stated.

Senator Kilgore. Thank you so much.

Senator Humphrey. Thank you, Mr. Chairman.

Senator Kilgore. Now the next witness is Dr. H.M. Griffith, Vice-President of the National Economic Council, Inc.

STATEMENT OF DR. H.M. GRIFFITH, VICE-
PRESIDENT, NATIONAL ECONOMIC COUNCIL, INC.,
7501 Empire State Building, New York 1, N.Y.

Dr. Griffith. Mr. Chairman, the National Economic Council, an organization including a representative cross section of the American public on a national scale, is vigorously opposed to enactment of either of these bills and urges you to reject them.

Senator Kilgore. Could I ask you a question on that point? You say "either". Do you mean any one of the three?

Dr. Griffith. Yes.

Senator Kilgore. There are two bills still in the committee and one on the calendar and I want to go as far as possible to all three bills, because if the committee should decide to do something else, why we would want your testimony to apply to all three.

Now go ahead, please.

Dr. Griffith. While these bills differ somewhat in detail, they contain identical assumptions and propose an almost identical course of action, so it is proper to consider them together.

We believe that, if enacted, this or similar legislation should and would be held unconstitutional, not only as to the letter of the Constitution, but as repugnant to our whole

governmental system and subversive of principles of justice basic to American law.

1. This legislation would be an attempted federal invasion of rights belonging only to the states and the local communities under the Constitution.

As all the distinguished members of the committee know, the powers of the Federal Government are delegated and limited. Only that which is given to it by the Constitution, or is found there by necessary implication, belongs to the Federal power. This will be disputed by none.

Nowhere in the Constitution is there any grant of power to the Federal Government in any of its branches to deal with crimes against the person, except in certain specified and unusual cases. It is clear both from the Constitution itself and from our whole legal tradition, that felonies against the public peace lie within the jurisdiction of the State where they are committed. The obvious intent of Article Ten of the Amendments to the Constitution makes this doubly clear. The power to deal with such offenses is not therefore lodged in the Federal Government. It follows by necessary implication that the Federal Government has no power to regulate or oversee an area of public life in which the individual States and their legally constituted subdivisions are supreme.

The attempt to give the form of law to a Federal

invasion of an area prohibited to it, can be viewed as nothing less than a deliberate effort to destroy the Constitutional balance as between the general government and the States in the interest of creation of a unitary, monolithic state with supreme powers over all life, unchecked by constitutional limitations. When viewed in conjunction with other legislation demanded by the same elements in American public life, there can be no doubt concerning the intention.

2. This legislation is unnecessary.

The laws of the several States are already ample and sufficient to punish the crime of murder. The laws of every State contain ample provision for the prosecution of conspiracies against the person, whether they result in death or in bodily harm. The definition of the "crime of lynching" in these bills can not add anything to the substantive law. There is no crime known to the law as "lynching". Laws against murder and felonious assault already exist, and it is the duty of the States and their subdivisions alone to deal with them.

3. This legislation violates a principle basic to American law.

It is one of the basic and most cherished principles of our law that innocence is presumed. Yet these bills, both implicitly and one (S.1404) explicitly, repudiate it. Both by implication hold the State or the local subdivision

responsible for what they call "lynchings" even when the authorities of these units know nothing of them until later. Section 8(1) of S. 1404 specifically requires that a governmental subdivision may only escape paying damages for anything termed a "lynching" within its jurisdiction if it can affirmatively prove its innocence by a preponderance of evidence.

I should like to add something to the prepared statement at this point. I would like to say I was equally interested in Senator Humphrey's reservations about S. 91 because he felt that the need to prove a conspiracy in that bill made too much of a burden upon the prosecution. That, it seems to me, is very good testimony for the other side if what I have just said is true, that here is a basic presumption of innocence. It is hard to prove a conspiracy, so he wants to bypass the whole spirit and substance of our law and make it possible to convict for conspiracy without going through the arduous labor of proving conspiracy.

Senator Kilgore. May I interrupt there? The theory there of conspiracy was put into S. 91 in an endeavor to meet some criticism. That constituted a conspiracy between a public official and a mob for the purpose of getting at the citizens. There is no question under existing law but what if a public official himself does certain things, he can be punished by the Federal Government. In other words,

when he violates his oath.

Dr. Griffith. That is quite true, sir.

Senator Kilgore. I thought I would explain that the reason for inserting that, to prove conspiracy between public officials and members of a group, was for the purpose of putting the group within the same classification as a public official.

Dr. Griffith. 4. This legislation is political in nature, is not addressed to a real situation, and is designed to create, not allay, race frictions.

That this legislation is political in nature is not open to question. It is being urged at the behest of certain so-called minority groups and it is obvious that it is a bid for votes. That this is so is proved by the fact that no situation exists which, even if Federal intervention were lawful, would even remotely require such intervention. In 1948 there were only two so-called "lynchings" in the United States -- and one of them was the murder of a white man. In contrast, in the same year there were seven thousand homicides in the United States. Yet the Federal Government has made no effort to take over the business of general law enforcement, nor has it threatened to try and convict state and local authorities who fail to prevent seven thousand homicides! Why not? If two so-called "lynchings" in a whole year create such an emergency as to demand Federal

usurpation of the power of the States, why is there no cry of "emergency" over the seven thousand murders? We all know why not.

The number of deaths from so-called "lynchings" has steadily declined. Only twenty-nine are on record for the ten years beginning with 1940, nor were all victims of the colored race. The patient processes of time are taking care of the problem -- indeed have, for all practical purposes, made the problem non-existent. But what is bound to be the effect of enactment of such legislation as this? The resentment it will engender is bound to create an atmosphere in which so-called "lynchings" will be more likely to happen than not to happen. Every realist knows this. Not only would it gravely offend the white people of the South but it would be bound to create among some colored persons a belief that punishment for crime would be less likely, with a corresponding rise in the incidence of the type of crime which might lead to unlawful violence. It is difficult, therefore, to see how anyone really concerned with bettering race relations and protecting human lives can urge such legislation. We are convinced that many of those who urge it do so precisely because they know that it will increase racial frictions and stir up racial trouble. You will not find a Communist against these bills. You will not find a Communist-frontier against them. You will not find any Marxist, anyone

interested in promoting class conflict, who is against them. Yet if this kind of legislation would really reduce racial tensions, every Communist, every Marxist would be against it. Instead, all these leftists vigorously promote such legislation. Isn't the conclusion clear?

5. The insincerity of this legislation is proved by what it omits.

There were two deaths from so-called "lynchings" in the U.S. in 1948. But in that same year -- and in 1949 also -- there were thousands of crimes of violence, many of them resulting in death, done by one group, which the high minded promoters of this legislation studiously ignore. We refer to the crimes of violence in connection with so-called "labor disputes." Hundreds of men have been beaten up by union goons, maimed, disfigured or killed, simply because they wanted to exercise their American privilege to work. Peaceful citizens accused of no crimes have been assaulted while going about their lawful business, or struck down on the streets because they insisted upon exercising their basic human rights. Workers and businessmen have had their homes burned and bombed, their ability to earn a livelihood for their families destroyed. Here, one would suppose, is a call to action for all who proclaim their devotion to human rights.

But what do we see? Are the groups that would overturn our constitutional system to deal with so-called "lynchings"

on fire to punish these many flagrant and open crimes, by Federal intervention? They are not. The reason is, again, quite obvious. The criminals who commit these crimes do what they do on behalf of groups with large blocs of votes. And the same elements of the public that scream over one so-called "lynching" are the very elements which think that "labor violence" is all right, just one of those things that must be expected in the great battle for "labor's gains." When the backers of so-called anti-"lynching" legislation come out for stringent action against labor union violence and lawlessness, they will then, and only then, be entitled to ask the American people to believe in their sincerity.

May I say at this point, Mr. Chairman, that Senator Humphrey emphasized the thought in his mind that he was presenting legislation to deal with the national rather than sectional problem, but I fail to hear anything in his testimony, nor should I expect to hear, that would include not only the matters enumerated in these bills but also mob violence due to so-called labor disputes which are of infinitely greater moment to the people of the United States than the subject of these bills. Under the bills as given there would be no jurisdiction whatever to deal with the sort of disputes that I have mentioned and it seems to me that if people are really concerned with human rights, they are going to be just as concerned about the human rights of a man

who does not want to submit to somebody else's dictation about his job as they will about human rights anywhere else in the country for any other purpose.

In conclusion, the National Economic Council holds that the attempt to gain special privileges, immunities, protections or rights for persons "because of race, creed, color, national origin, ancestry, language or religion" is, while ostensibly high-minded, in reality subversive of our free society. Every American, be he a member of a so-called "minority group" or simply a member of the great majority, is entitled to equality before the law. No American is entitled to more than that. And, under our laws, such equality already exists. It has existed here a long time, and as nowhere else on earth. But the continual efforts of various so-called "minority groups" to secure legal protections and immunities above those possessed by other citizens, does not serve to integrate them into the American community. Such efforts tend, on the contrary, to set them apart from others, to stimulate frictions, to render their position less rather than more secure.

Enactment of such legislation as this, therefore, would be a first-class tragedy for the Negro people. It would be a first-class tragedy for any other so-called "minority group" that also might seek to take advantage of it for special preference. The way of wise leadership, the way to an

American of true brotherhood and concord, is for each person to live simply as an American, to think of himself only as an American, to ask no special favors, protections or immunities as a member of a group, to be content with his equality as an American under law that is the same for all. If there are blemishes in our national life, that is the way to cure them. Setting group against group, race against race, will never do it.

Senator Kilgore. Is this statement of yours the statement of the National Economic Council?

Dr. Griffith. Do you mean, sir, if the Council had a meeting?

Senator Kilgore. Are you submitting it on behalf of the National Economic Council, Inc.?

Dr. Griffith. Yes, sir.

Senator Kilgore. You are speaking for them? What is the National Economic Council?

Dr. Griffith. It is a citizens' organization which has been in existence since 1930, composing a cross section of American life. I think we have almost every type of American that could be statistically tabulated in its membership. We do not ask our members to vote on all such statements as these.

For example, we knew only a few days ago that this hearing was to be held. Nevertheless, our membership over

the years has indicated their approval of positions we have taken by continuing to support us and by continuing their membership.

Senator Kilgore. What part of that membership then did authorize this statement?

Dr. Griffith. The executive committee.

Senator Kilgore. How many members are there in the executive committee?

Dr. Griffith. Five.

Senator Kilgore. Could you name them for the record, please, giving their address?

Dr. Griffith. You will have to let me supply that later for the record. I can not recall offhand all the names and initials but I can do so before the day is over.

Senator Kilgore. Will you please supply that information. I should like to have the names of the officers and of the executive council.

(The information referred, to, subsequently submitted, is as follows:)

Senator Kilgore. You have conducted no poll of course and this is the action of the executive committee speaking as representatives of the membership; is that right?

Dr. Griffith. That is correct, sir.

Senator Kilgore. Where are you incorporated?

Dr. Griffith. In New York.

Senator Kilgore. I was very much interested in the last two paragraphs of your statement, particularly in view of some of the other statements. You know, of course, that employers have their associations the same as employees?

Dr. Griffith. That is true, sir.

Senator Kilgore. Do you oppose then the National Association of Manufacturers, for instance, seeking to pass legislation in the Congress, sending their representatives down here?

Dr. Griffith. If they ask for special immunities or privileges under the law, I would object to it if they asked for it, yes sir.

Senator Kilgore. Also, all the other groups that do so-called group lobbying? You are opposed to that?

Dr. Griffith. I am not opposed to any group lobbying. I am a lobbyist myself. I am a registered lobbyist. I think it is an inalienable right to get together as a group to ask Congress to do something for the good of the people. I object to somebody doing something if he asks for special

privileges and immunities which do not belong to all citizens.

Senator Kilgore. As you well know, we are hammered to death by lobbyists on everything from taxation to appropriations and on all sorts of special legislation. I am not attacking their integrity on that because there is a tendency for all human beings to look at things through their own eyes, and those eyes of course have been through associations taught to see certain things, and I do not question the sincerity of the people who come to me frequently, but sometimes I question the advisability of doing what they want us to do.

I just wanted to get your attitude on that.

Thank you.

Dr. Griffith. Thank you, Mr. Chairman.

Senator Kilgore. Our next witness is Mr. Joseph Robison, representing the American Jewish Congress.

STATEMENT OF JOSEPH ROBISON ON BEHALF OF
THE AMERICAN JEWISH CONGRESS.

Mr. ,Robison. Thank you very much, Senator Kilgore, for permission to appear here today. Other witnesses have commented on the fact that we had rather short notice and I want to thank you for waiving the requirement of a prepared statement. I understand that the hearings may continue for a little while.

We have prepared for this hearing, Senator Kilgore, a legal memorandum which is almost identical with the one we filed two years ago. I have just one copy which I was going to file with penciled corrections in rather rough form. If the hearings are going to continue, it would perhaps be better for me to leave that here and I ask leave to file a memorandum in better shape very shortly.

Senator Kilgore. I grant you permission at this time to file it at any time within the next two weeks and have it put in as part of your testimony at this time.

(The statement referred to, subsequently submitted, is as follows:)

Mr. Robison. My testimony here will be oral and not based on any statement.

The American Jewish Congress has appeared at many congressional hearings before this one, Mr. Chairman. It is an organization of American Jews throughout the country and is affiliated with the World Jewish Congress which is an organization of Jewish organizations throughout the world. It is organized to protect the security of American Jews and to insure equality not only for American Jews but for all Americans. It has been in existence since 1919.

We have always recognized throughout our history that the status of the Jews in America or anywhere else is endangered whenever democracy is in danger, that we and all Americans are safe only when democracy is assured.

Lynching is a form of subverting democracy, of limiting democracy, and we are therefore very much in favor of an anti-lynching bill and an effective anti-lynching bill. We think that it would be unfortunate if at this time the Congress were to pass an inadequate anti-lynching bill, which would be an empty gesture. For that reason we support the broad bills S. 1404 and S. 1726 and urge the committee not to support the Ferguson bill, S. 91.

As between the two bills I have mentioned, S. 1404 and S. 1726, we express no substantial preference. S. 1726 appears to be the Administration supported bill and is not

quite as comprehensive as the Morse-Humphrey-Wagner bill, S. 1404, but nevertheless we believe it is entirely adequate.

Now I do not have to go into detail on the evils of lynching. I think Senator Humphrey covered that very thoroughly.

Senator Kilgore. I want to ask you a question at this point. I think the evils of lynching are double-barreled. I feel that not only the subjects of lynching suffer but that people who participate suffer a demoralization from it that is not good for them and that communities in which it takes place really suffer from it as an after effect. The more decent thinking people have a revulsion for it.

Do you not think that?

Mr. Robison. I think that is very true. When those same people are in school or in their churches or synagogues and learn about the principles of the Declaration of Independence and the Constitution and at the same time have in the back of their minds the memory of a lynching which may have taken place either in the recent past or even in the distant past, it must cause a very serious conflict within themselves to realize how far their practices are from the principles of democracy.

I am going to get to the constitutional issues as quickly as possible. There are just a few general points.

Since lynching is wrong, it is a legitimate target for

action by any government, state or federal, and only the most compelling and convincing constitutional reasons should induce the Congress of the United States to refrain from passing an effective anti-lynching bill. If it is absolutely clear that it is unconstitutional, all right, but I believe a substantial case can be made out of the constitutionality of the broad bill.

On the nature of lynching itself those who oppose the anti-lynching bill repeatedly try to give the impression that lynching is just a murder. That is wrong on two counts. First, a lynching may not be a murder. When a member of a minority group is oppressed by force and violence which falls short of killing, it is still a lynching. On the other hand, lynchings are much more than murder.

Senator Kilgore. He may not be just a member of a minority group; he may be a member of a majority group in his county, yet because of something he has done or because he does not agree with the majority, he has been punished.

Mr. Robison. In other words, he may be treated without proper recourse to the courts.

Senator Kilgore. Yes.

Mr. Robison. The important aspect of lynching which makes it different from the ordinary kind of crime is that it does subvert the processes of government. Now an ordinary murder does not. Even when it goes unpunished it

does not subvert the processes of government.

It does not mean that people generally begin to feel that they are not protected by the written guarantees of the Constitution and the statutes. Our Constitution guarantees to everyone charged with crime due process of law, which includes the right of trial by jury, and assures to every person charged with crime equal protection of the laws.

What is the purpose of lynching? The purpose of lynching is to see that Americans charged with crime are not given the right of law. It is to impress upon some particular group that they are in an inferior status. I do not have to drive that point home. It has been made very well by the President's Committee on Civil Rights and their findings on that were incorporated almost verbatim by the House Judiciary Committee in the 80th Congress when they reported out a broad anti-lynching bill.

The state is necessarily implicated in every lynching. State officials make lynchings possible by inaction, by not acting. The state permits the mob to do what the state itself can not do. The state can not lynch people. The state can not condemn people without trial. Because the local officials in fact want to do those things, want to do what the Constitution says they can not do, the state stays out of the picture while the mob does the dirty work.

Senator Kilgore. In other words, a bad feature of

lynching or mob violence -- let us call it mob violence -- in my humble opinion is the fact that it demonstrates a weakness in local authority.

Mr. Robison. Yes, a breakdown in government; that is quite correct.

Senator Kilgore. No matter what kind of mob violence it is.

Mr. Robison. Yes.

Senator Kilgore. Go ahead.

Mr. Robison. Now as I understand it, the chief point at this hearing is whether or not to report a bill somewhat broader than S. 91 which has already been reported. The chief question there is whether or not an anti-lynching bill can apply where there is no direct implication of state authority, that is, where it is a purely private mob which goes out and lynches. We believe that a bill can be drawn constitutionally to have that stopped and there are at least four theories on which it can be done.

The first is that it is a proper exercise of Congress's power under Article IV, Section 4 of the Constitution, which guarantees to the states the republican form of government.

The second is that assuming that the Fourteenth Amendment applies only where there is action by the state, where the state participates in the action. That test is satisfied here because the state in fact participates by

deliberately refraining from action which it otherwise would take.

The third point is that the assumption which I have just made is erroneous, that the Fourteenth Amendment should not be limited to state action. That would mean, of course, that the Supreme Court decision in the Civil Rights cases was erroneous.

Finally, there is the point that the bill is an appropriate exercise of the power of Congress to implement a treaty of the United States.

Now I shall discuss here only the first two of those points, Mr. Chairman. The other two points have been very thoroughly covered in a memorandum by Senator Morse which has been submitted today by Senator Humphrey. Those are the two chief points of that memorandum and I can add nothing to it at all, but the other two points I do wish to go into in as much length as you may wish to hear me.

On Article IV, Section 4, which provides that the Government of the United States shall guarantee to all the states the republican form of government, obviously that means that they shall guarantee the realities of republican government, not merely the form. It is not enough that the laws and constitution of the state are in republican form. In fact, the laws are not followed and mob rule and not due process is the action which prevails.

Now, the Supreme Court has any number of times, and our memorandum is quite detailed on this point, Mr. Chairman, refrained from enforcing that provision of the Constitution, and has said this is not a matter for courts, we will never attempt to determine whether or not the republican form of government prevails. That is a matter strictly for Congress. It is up to the Congress of the United States to implement this provision of the Constitution and they have full power to do so and can do it in any way they think appropriate.

Now what I have said before I believe shows that in fact when a lynching takes place and lynch terror prevails a republican form of government does not exist in fact. The experience with lynching over the years give enough experience for Congress to act on, to find that where a lynching takes place the republican form of government does not exist, and it is up to the Congress in the exercise of its powers under that section to take appropriate action. There is no question that that section of the Constitution gives the Congress affirmative power to legislate.

Another provision in the same article, which is cast in much the same language as Section 4, is Article IV, Section 2.-3. which provides that a person held to labor in one state shall be freed in another state. It was a clause dealing with the problem of slavery. Before the Civil War, Congress passed the Fugitive Slave Act in order

to implement that section and the Supreme Court held in 1841 that that provision gave Congress ample power to legislate.

We believe that the legislation proposed under the republican form of government clause is no broader, is just as well designed to implement a parallel provision of the Constitution. As a matter of fact, the Supreme Court has gone so far as to say it is the duty of Congress to enforce this law wherever they feel the republican form of government is jeopardized.

I do not know whether this should be on the record or not but when I said that to the House committee two years ago one member of the House committee asked, "Are you in a position to tell us we have to pass this law for this reason?" I said, "No, whether it may be a congressional duty, it is the duty of Congress to determine whether or not the republican form of government is jeopardized; second, whether this is an appropriate step to enforce it."

I turn now to the question of whether there is state action in a lynching situation which is sufficient to warrant an exercise of congressional power under the Fourteenth Amendment. I assume now for the purpose of discussion that the Civil Rights cases are correct, that there is no question that the Fourteenth Amendment applies only to where there is state action. That is the formula which is usually used,

state action. The Supreme Court has held that state action includes state inaction.

Senator Kilgore. There is one point I should like to make there which is rather interesting in line with your statement. That is the occasion when a chief executive of a state calls upon the Federal Government to move into the state with troops to put down mob violence, as has happened in numerous times. Is that in line with your theory there that in so doing they are maintaining the republican form of government in that area by keeping mob violence from ruling?

Mr. Robison. It is, Mr. Chairman, and I have to confess that I am a little rusty on this. We do have something in our memorandum and in the short space of time I have not been able to brush up on it sufficiently, but there is a specific federal statute under the provisions of the Constitution which permit sending in federal troops under those circumstances. I know we refer to it for some purpose. I can not bring it back at the moment but it is in the memorandum and I believe you will find it is certainly in line with our general theory under Article IV, Section 4.

Now in the due process clause the point I was making was that the Supreme Court has held you can have an unconstitutional violation of due process when the state simply fails to act. That was the celebrated case of *Truax vs. Corrigan* where a state passed a law withholding the use of

the injunction in certain labor cases, in certain kinds of picketing, and a strike took place. There was picketing and the restaurant that was picketed sued to have the picketing enjoined. The state court held, "We can not issue an injunction under these circumstances because the statute which was just passed prohibits us from issuing an injunction."

I might say the facts show that the picketing resulted in a reduction of business to one-third of what it was formerly. That case went to the Supreme Court and they held that the mere fact of what is being complained of here, that the state refused to act, did not keep it from raising a constitutional question and they went on to hold that the state's refusal to act was unconstitutional and directed the state to issue injunction in that case.

Senator Kilgore. What is the citation?

Mr. Robison. That is Truax vs. Corrigan. The citation is in the statement.

Senator Kilgore. I wanted to make sure it was in the statement.

Mr. Robison. Now at the very least any lynching situation is a case where the state has failed to act. In some cases, of course, the state is directly implicated but in the other cases, the cases we are trying to reach, the state is deliberately failing to act.

You have a situation where normally the state would

act. For murder or other forms of violence the state has laws on the subject and the state would act if it wished to, but it is deliberately refraining from acting.

I might say that so far as I know, no person guilty of lynching has been convicted for his misconduct at any time in the last 10 or 20 years at least. I should like to be corrected on that if I am wrong but I am almost certain that is true. There has not been a single case where a state has punished a lyncher, at least in recent years, and the number of lynchings continues to be substantial. There were four last year in 1949.

Now that is a situation which has continued for a long time. It is a notorious fact that lynchings have not been punished, that there has been inaction on the part of the states who are responsible for punishing lynchings, that a situation exists in which large numbers of people are being denied their constitutional rights because the states failed to punish lynching. This is a notorious fact, a fact which is set forth in detail in the report of the President's Committee on Civil Rights.

I might say that some people may think the drive for an anti-lynching bill is a purely political drive but I do not think the President's Committee on Civil Rights can be characterized as a political group. They found unanimously that this situation existed, that in fact lynching deters

whole groups in the population, imposes a state of terror upon those groups, and that the state has failed to act to prevent that situation from developing. Where that situation exists, we submit, Congress can find that it exists as the House committee did two years ago and can enact appropriate legislation.

The Supreme Court decisions of the last century do not look the other way. They held in the Civil Rights cases and other cases under the Fourteenth Amendment that Congress does not have general power to legislate against the conduct of private groups but in each one of those cases, and they are cited in our memorandum and we have the quotations in each one of those cases, the court so ruled because it found that the state was adequately taking care of the situation. In the Civil Rights cases where restaurants and theaters were involved they presumed that the common law rules apply, the common law rules of equality apply and there is no inequality in state laws. In one case they said in so many words that these are rights which are to be protected in the first instance by the states but where the states failed to protect the national government can.

We think that the evidence is very clear here, Mr. Chairman, that there has been such a failure. We believe that the Congress can so find and having made such finding, it can take appropriate action which is the passage of the

anti-lynching bill.

Senator Kilgore. For the benefit of the record, in filing your statement I wish you would include with it a list of the executive board and of the officials of the Congress.

Mr. Robison. We will certainly do that.

Senator Kilgore. I want that in order that the testimony may in all cases show the background of groups testifying.

Mr. Robison. Very good.

Senator Kilgore. Will you get that to us some time in the next week or 10 days?

Mr. Robison. Yes.

(The statement referred to, subsequently submitted, is as follows.)

Senator Kilgore. Mr. Chambers from the Department of Justice.

STATEMENT OF FRANK CHAMBERS, LEGISLATIVE UNIT, OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL, AND MR. LEO MELTZER, CIVIL RIGHTS SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE.

Mr. Chambers. Mr. Chairman, the bill on which I am submitting this statement on behalf of the Attorney General is S. 1726 which was introduced by Mr. McGrath as Senator and he very strongly urges the passage of this legislation. I have a statement here for the record which with your permission I will now read on behalf of the Attorney General.

In my judgment the Federal Government today has the obligation to protect its citizens, and in fact all inhabitants of the nation, from the forcible deprivation by mob action of the right to a fair trial. It has that obligation, also, in my view, as to mob action directed against individuals by reason of their race, color, religion, or national origin. The Department of Justice has long endeavored to enforce these rights to the fullest extent possible under the provisions of existing law. But serious limitations have been imposed. In my opinion the time has come for strengthening the existing law so as to deal adequately with the entire problem of lynching.

Under the existing general statutes, notably 18 U.S.C. 241 and 242, and the general conspiracy provision, 18 U.S.C.

371, the basis exists, and the Department has used it successfully, though under certain major handicaps, to prosecute state officers and private individuals who conspire with the state officers to substitute mob violence for the lawful adjudication and punishment of crime in accordance with due process of law. The sections of law to which I have referred (18 U.S.C. 241-242, 18 U.S.C. 371) enable us to deal with part of the so-called lynching problem.

However, this by no means meets the whole problem. It is essential that the government be put in a position to prosecute the members of a lynch mob, particularly where there is no element of conspiracy with local officers. These undoubtedly comprise the bulk of the present-day cases where the threat of lynching exists.

In addition, it is essential that the government should not be limited to those cases where persons are taken from law enforcement officers with or without the consent of such officers. There have been far too many instances in the past of lynching or the threat of lynching in the case of persons neither charged with nor suspected of crime, but who, for economic or political reasons, have been the subject of lawless mob action because of their race, color, religion, or national origin. Such a situation is intolerable in our society. The government must be in a position to deal with all of these situations.

Accordingly, I support S. 1726 as an anti-lynching measure which meets the needs of the law enforcement agencies. Consideration of the kind of bill which is to be enacted becomes particularly significant, because bills have been introduced in the Congress which, though entitled anti-lynching measures, fall far short of the situation which must be remedied.

I would like, therefore, to summarize briefly for you the provisions of S. 1726 so that there is clear understanding upon what I and my Department think is essential for a federal anti-lynching bill.

Section 1 gives the short title.

Section 2 contains legislative findings. I would regard these findings to be particularly useful in relation to our endeavors in world affairs. Certain it is, too, that here at home we must meet the challenge of Communism in the ideological field where we are best equipped, namely, in the securing of individual rights to life and liberty.

Section 3 declares the right to be free from lynching to be a federally protected right.

Section 4 - As defined in this section, a lynching may be committed by an assemblage of two or more persons who are referred to as a lynch mob. Two general types of lynch mob violence form the basic offense: (a) that committed or attempted because of the race, color, religion or national

origin of the intended victim, or (b) that committed or attempted by way of correction or punishment of the intended victim, who is either in the custody of a peace officer, or who is suspected of or charged with or convicted of the commission of a criminal offense, with the purpose of consequence of preventing the apprehension or trial or punishment by law of the victim or of imposing a punishment not authorized by law. By these indicia, it is intended to distinguish lynching from ordinary violence.

Section 5 provides punishment for two classes of persons (1) any member of a lynch mob, and (2) any person whether or not a member of a lynch mob who instigates, incites, organizes, aids, abets or commits a lynching by any means whatsoever. The penalties are graded, so that the serious offenses resulting in death or maiming or severe property damage (as defined) may result in imprisonment up to twenty years or a fine of \$10,000 or both. All other offenses may be punished by imprisonment of not more than one year or a fine of not more than \$1,000 or both. The distinction in punishment allows for the technical differences in prosecuting felonies and misdemeanors under federal law. Thus, a misdemeanor, an offense punishable by imprisonment not exceeding one year (18 U.S.C. 1), may be prosecuted by information rather than by indictment, *Catlette v. United States*, 132 F. (2d) 902.

Section 6 provides punishment for "peace officers" who neglect, refuse or willfully fail to make diligent efforts to prevent lynching or to protect persons from lynch mobs or who wilfully fail to make diligent efforts to apprehend or keep in custody members of a lynch mob. Subsection (a) is directed against state and municipal peace officers. Subsection (b) is directed against federal peace officers in places where the United States exercises exclusive criminal jurisdiction.

Section 7 defines "peace officer."

Section 8 - Under this section, the kidnapping law is amended so as to make punishable the transporting, in interstate or foreign commerce, of persons unlawfully abducted or held because of race, color, religion or national origin or for purposes of punishment, correct or intimidation.

Section 9 is a separability clause.

The crime of lynching is a blot on our national life. It is condemned by right-thinking people in every section of our country.

I am not unmindful, of course, that serious questions of constitutionality will be urged with regard to some of the provisions of the bill. But I am thoroughly satisfied that the bill as drawn is constitutional. It is true that there is a line of decisions holding that the Fourteenth Amendment relates to and is a limitation or prohibition upon state

action and not upon acts of private individuals (Civil Rights cases, 109 U.S. 3; United States v. Harris, 106 U.S. 629; United States v. Hodges, 203 U.S.1). These decisions have created doubt as to the validity of a provision making persons as individuals punishable for the crime of lynching. However, without entering here upon a discussion of whether or not these decisions are controlling or possess present-day validity in this connection, it may be pointed out that such a provision punishing persons as individuals need not rest solely upon the Fourteenth Amendment. Upon proper congressional findings of the nature set forth in S. 1726, the constitutional basis for this bill would include the power to protect all rights flowing from the Constitution and laws of the United States, the law of nations, the treaty powers under the United Nations Charter, the power to conduct foreign relations, and the power to assure to the states a republican form of government, as well as the Fourteenth Amendment.

I urge that the Congress exercise its full powers to give a governmental guaranty to the foremost freedom, the freedom to live. That exercise of power will, in my opinion, be upheld by the judiciary.

Senator Kilgore. Thank you very much.

Mr. Chambers. Thank you, Mr. Chairman.

Senator Kilgore. The committee will now recess, to meet again at the call of the Chairman.

(Whereupon at 12 noon the committee recessed to the call of the Chair.)